

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLEE**

74-1188

To be argued by
DOUGLAS F. EATON

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 74-1188

UNITED STATES OF AMERICA,

Appellee,

—v.—

GEORGE CANTON, a/k/a GEORGE COMBES,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR THE UNITED STATES OF AMERICA

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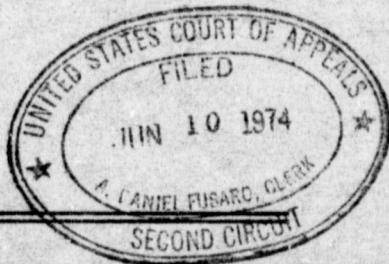


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GEORGE CANTON, a/k/a George Combes,
Defendant-Appellant.

BRIEF FOR THE UNITED STATES OF AMERICA

Preliminary Statement

George Canton, a/k/a George Combes,* appeals from a judgment of conviction entered February 6, 1974, in the Southern District of New York following a four-day trial before the Honorable Edward L. Palmieri, United States District Judge, and a jury.

Indictment S 73 Cr. 840, filed on September 4, 1973, charged that Combes and Raymond Solomon participated in an armed robbery of the Chemical Bank, 9 East 167th Street, Bronx, New York on August 9, 1973, in violation of Title 18, United States Code, Sections 2113(a) and 2113(d).

Trial began on December 3, 1973. On December 6, 1973 the jury found Combes and Solomon guilty of both the robbery (Count One) and assault during the robbery (Count

* The appellant will be referred to as George Combes in this brief, as he was during the trial.

Two). On February 6, 1974 Judge Palmieri sentenced Combes * to a term of 20 years on Count Two.

Combes is now serving this sentence at the United States Penitentiary, Leavenworth, Kansas.

Statement of Facts

A. The Government's Case

The evidence established that on August 9, 1973 Combes and two other men entered the Chemical Bank branch on East 167th Street in the Bronx, put on stocking masks, brandished pistols, vaulted the counter and took \$34,610.00. They then left the bank and got into a nearby car in which Solomon had been waiting. After Solomon drove about three blocks, Combes and the other two men got out of the car and walked away, unaware that they had been followed by a customer and an employee of the bank. The customer then located two police officers, who surprised Combes and the other two men a few minutes later. Combes and the two men fled through a vacant lot (Tr. 41-59, 65). The police recovered several items of Combes' clothing and almost all of the stolen money in the lot. They then noticed a broken window in the door of the nearest house. They went inside and found Combes hiding in a closet. The other two men escaped (Tr. 173-179). Solomon was arrested at home because the bank employee had written down the license plate of Solomon's car (Tr. 121-122).

B. The Defense Case

Combes did not present any defense. Solomon took the stand and also called two alibi witnesses and a character witness. Solomon testified that he had never seen Combes before they were arrested (Tr. 292-293).

* On the same day Solomon was sentenced to a maximum of four years as a Young Adult Offender. Solomon filed a notice of appeal, but then moved to withdraw his appeal. This Court granted that motion on May 20, 1974. On June 3, 1974 Solomon surrendered and commenced serving his sentence.

ARGUMENT

The Court Clearly Instructed The Jury That The Government Must Prove Each Element Of The Crime Beyond A Reasonable Doubt.

During his instructions to the jury, Judge Palmieri stated:

“Before you may convict either or both defendants on Count 1, the Government must prove four essential elements, each one beyond a reasonable doubt, as to the defendant in question. If there is a reasonable doubt as to any one of these essential elements, the defendant should be acquitted” (Tr. 443).

Combes' sole claim on appeal is that the second sentence in the quoted passage somehow “vitiated” the first sentence. Combes gives no reason for this claim, and it is clearly frivolous.

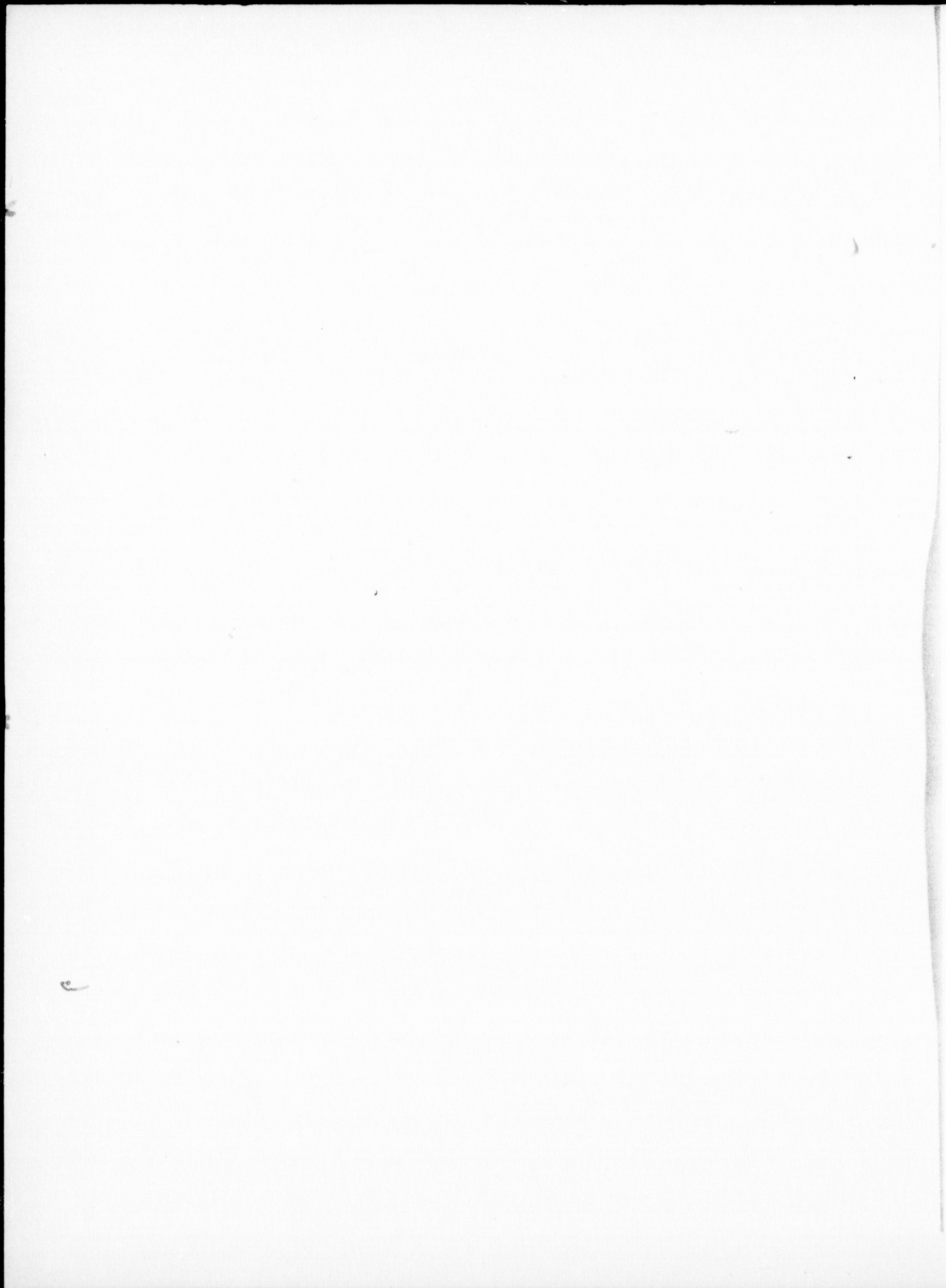
CONCLUSION

The judgment of conviction should be affirmed.

Respectfully submitted,

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Attorney for the United States
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DOUGLAS F. EATON,
JOHN D. GORDAN III,
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AFFIDAVIT OF MAILING

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

DOUGLAS F. EATON, being duly sworn,
deposes and says that he is employed in the office of the
United States Attorney for the Southern District of New York.

two copies of That on the *10th* day of *JUNE*, *1974*
he served a copy of the within *BRIEF*
by placing the same in a properly postpaid franked envelope
addressed:

THEODORE KRIEGER, ESQ.
401 BROADWAY
NEW YORK, NEW YORK 10013

And deponent further says that he sealed the said envelope
and placed the same in the mail drop for mailing
at the United States Courthouse, Foley Square,
Borough of Manhattan, City of New York.

Douglas F. Eaton

Sworn to before me this

10th day of *JUNE*, *1974*

Ralph I. Lee

RALPH I. LEE
Notary Public, State of New York
No. 41-2292838 Queens County
Term Expires March 30, 1975